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**OFFICE OF PETITIONS**

In re Application of :  
Daniel T. Johnson, et al. : DECISION ON PETITION  
Application No. 10/734,725 : UNDER 37 CFR 1.78(a)(3)  
Filed: December 12, 2003 :  
Attorney Docket No. 14573.01 :  
:

This is a decision on the petition filed on July 21, 2004, which is being treated under 37 CFR 1.78(a)(3) to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to the prior-filed nonprovisional application.

The petition is **DISMISSED**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is applicable to applications filed on or after November 29, 2000 and is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). Further, a petition under 37 CFR 1.78(a)(3) must be accompanied by:

- (1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application(s), unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

The instant petition does not comply with item (1).

Petitioner failed to submit an Application Data Sheet or an amendment to the first sentence of the specification following the title to include a proper reference to the prior-filed application. It is noted that the present petition states that “[a]pplicant submits herewith a Request to Amend the

Specification to incorporate the priority claim." However, no such amendment was found among the papers filed July 21, 2004.

37 CFR 1.78(a)(2)(i) requires that any nonprovisional application claiming the benefit of one or more prior-filed copending nonprovisional applications must contain or be amended to contain a reference to each such prior-filed application, identifying it by application number (consisting of the series code and serial number) and indicating the relationship of the applications.

Accordingly, before the petition under 37 CFR 1.78(a)(3) can be granted, a renewed petition under 37 CFR 1.78(a)(3) and a substitute amendment<sup>1</sup> stating the relationship of the prior-filed application to the instant application is required.

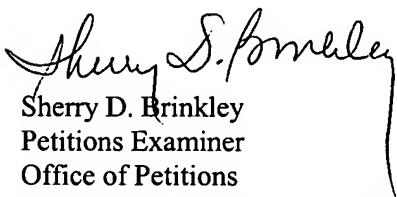
Further correspondence with respect to this matter should be addressed as follows:

By mail:                    Mail Stop PETITION  
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The centralized facsimile number is (703) 872-9306.

Telephone inquiries related to this decision should be directed to Sherry D. Brinkley at (571) 272-3204.

  
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<sup>1</sup> Note 37 CFR 1.121